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In re Application of
FELZMANN

Application No.: 10/527,679

PCT No.: PCT/EP03/09591

Int. Filing Date: 29 August 2003

Priority Date: 13 September 2002

Attorney Docket No.: 4518-0101PUS1

For: USE OF DENDRITIC CELLS (DCS)
EXPRESSING INTERLEUKIN 12 (IL-12)

DECISION

This decision is in response to applicant's submission filed via facsimile transmission in the United States Patent and Trademark Office (USPTO) on 03 February 2006, which has properly been treated as a petition under 37 CFR 1.181. No petition fee is required.

BACKGROUND

On 29 August 2003, applicant filed international application PCT/EP03/09591, which designated the United States and claimed a priority date of 13 September 2002. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 25 March 2004. The thirty-month period for paying the basic national fee in the United States expired at midnight on 14 March 2005 (13 March 2005 being a Sunday).

On 11 March 2005, applicant filed, *inter alia*, a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee and an assertion of small entity status.

On 07 October 2005, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) and the surcharge under 37 CFR 1.492(e) for providing the oath or declaration later than thirty months from the priority date were required. The Notification set a two-month extendable period for reply.

On 03 February 2006, applicants filed the instant submission via facsimile transmission, which has been treated as a petition under 37 CFR 1.181. The petition was accompanied by, *inter alia*, a date-stamped postcard receipt and a copy of a declaration of the inventor.

DISCUSSION

Applicant has provided sufficient evidence to establish that on 11 March 2005 applicant filed a declaration of the inventor. The proof is in the form of the copy of the receipt for the above-identified application which bears a USPTO date stamp of 11 March 2005 and which itemizes a "Combined Declaration & Power of Attorney" and identifies the above-captioned docket number and applicant. Further, practitioner states that the copy of the declaration filed 03 February 2006 is a copy of the declaration originally filed 11 March 2005. Therefore, in view of the date-stamped receipt and practitioner's statement, the declaration received on 03 February 2006 may properly be accepted as originally received in the USPTO on 11 March 2005. The NOTIFICATION OF MISSING REQUIREMENTS mailed 07 October 2005 is hereby vacated.

The declaration filed 11 March 2005 is in compliance with 37 CFR 1.497(a)-(b).

CONCLUSION

The petition under 37 CFR 1.181 is **GRANTED** for the reasons set forth above.

The NOTIFICATION OF MISSING REQUIREMENTS mailed 07 October 2005 is **VACATED**.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national stage processing of the application in accordance with this decision.



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